No. 2860

IN THE

# United States Circuit Court of Appeals

## For the Ninth Circuit

GUJAR SINGH and INDAR SINGH,
*Appellants,*

vs.

UNITED STATES OF AMERICA,
*Appellee.*

# BRIEF FOR APPELLANTS.

JOSEPH P. FALLON,
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*Filed this.....day of April, 1917.*

*FRANK D. MONCKTON, Clerk.*



*By.....Deputy Clerk.*

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This is an appeal from the order and judgment of the lower Court sustaining the demurrer interposed and denying a petition for a writ of habeas corpus.

The above named appellants are Hindu aliens who came to the United States in the years 1907 and 1909 respectively, and were admitted after due inspection by the immigration officials at the Port of San Francisco.

They were arrested on the 22nd day of April, 1915, at Sandpoint, Idaho, by the immigration authorities and after a hearing before the Department of Labor were ordered deported.

The warrant of deportation stated two grounds for the action of the Department of Labor, to wit:

1. That the aliens came across the border from Canada into the United States without inspection.

2. That the aliens were likely to become public charges.

To the first charge the aliens in their preliminary examination admitted that they had recently come from Canada but subsequently denied ever having made any such statement.

At the time the statement was alleged to have been made the aliens were without the presence of counsel or friends, and could easily have been misunderstood through error in translation. (Ex parte Chan Kam, 232 Fed. 855.)

The alien Indar Singh is especially pronounced in his assertions that he never crossed the border and that he had worked in the saw mills along the Montana and Idaho side of the border line.

It is admitted by the Department of Labor that these men came to the United States in the years 1907 and 1909 respectively and were duly and regularly admitted at the port of San Francisco, but contend that because they had been in Canada and had recently entered the United States, that fact started the running of the three-year statute anew and any prior residence in the United States would not prevent their deportation.

Our contention is that these men never left the United States after arriving at the port of San Francisco in the years 1907 and 1909; that they were saw mill laborers and were working along the

border line of Canada at the time of their arrest but had not crossed the line. There is no evidence adduced at all that the aliens had ever crossed the line. They were taken from a box car at Sandpoint over seventy-five miles from the border and in a country teeming with the lumber industry and saw-mills. The inspector reaches the conclusion that they were across the line because they had on some wearing apparel that indicated a Canadian origin, and makes a report that the aliens' claims are "fishy". If government officials were permitted to deport aliens on such flimsy evidence then there could be no security for the alien in this country.

In the absence of substantial evidence to sustain the same, the order of deportation is arbitrary and unfair and subject to judicial review. (Whitfield v. Hanges, 222 Fed. 745, 751; McDonald v. Sier Tak Sam, 225 Fed. 710; Ex parte Sam Pui, 217 Fed. 456; Ex parte Chan Kam, 232 Fed. 855; Backus v. Owe Sam Goon, 235 Fed. 847.) In this case there is no substantial evidence to maintain the first ground set out in the warrant of deportation.

As to the second charge that the aliens are likely to become public charges it will be observed that at the time this case was considered by the lower Court the cases of Healy v. Backus, 209 Fed. 200, and Marshall v. Backus, 213 Fed. 123, had just been decided by this Court adversely to the appellants in those cases and that fact no doubt had much to do with influencing the opinion of the lower Court in the instant case. In the cases just cited there was

a great deal of conflicting evidence and the adverse decision was the result.

The cases of Healy v. Backus, 209 Fed. 200, and Marshall v. Backus, 213 Fed. 123, were subsequently appealed to the United States Supreme Court and were there dismissed in favor of appellants.

In the instant case there was no evidence introduced that these appellants would become public charges and how the Department of Labor arrived at that conclusion is a mystery. The aliens whom the Government are seeking to deport are subjects of Great Britain. As such subjects, they are, under and by virtue of the existing treaties between the United States and Great Britain, entitled to all rights, privileges and immunities within the territory of the United States of subjects of the most favored nation. Within the rights, privileges and immunities thus guaranteed to them are included all rights, privileges and immunities which are accorded to immigrants from the most favored nation seeking admission to the United States. There are by such treaties assured to these aliens absolute immunity from discrimination of any nature whatsoever on account of race, color or religion.

The aliens have been ordered deported because the immigration officials have found that they are likely to become public charges, but there can be no reasonable doubt, that the conclusion is based on prejudice and the opinion of the Court below in the

case of Healy v. Backus, supra, aptly expresses the situation when it finds that,

> "The finding that they were persons likely to become a public charge is based in reality, however much the immigration officers may disclaim the fact, upon the general showing and implied finding that there is a prejudice against the Hindu."

The proof upon which the order of deportation was based in the case of Healy v. Backus, supra, consisted of affidavits procured by the government in different parts of California, tending to show that immigrants from India are obnoxious and there exists a prejudice against them. In the instant case there is no proof whatever and is purely a figment of the imagination of the inspector and is not based upon substantial evidence. As heretofore stated, the Government confessed error on this point in the cases of Healy v. Backus, 209 Fed. 200; Marshall v. Backus, 213 Fed. 123, when those cases were appealed to the United States Supreme Court and the cases were accordingly dismissed. If that were true in those cases with what greater force should it not apply to the instant case where there is no foundation for the charge at all. These men are experienced mill-men and are never out of employment. There is no question as to the aliens being sound both physically and mentally and of a high type of mill-men whom employers are only too glad to engage. That they have passed inspection once and were duly admitted to the United States makes a proceeding, wherein it is alleged and with-

out any evidence to support it, that they stepped across the Canadian border line and therefore must be returned to India appear ridiculous.

Our contention also is that the order of deportation should have directed that the aliens be deported to Canada instead of India for the same reasons as set forth in the companion case of Dhanna Singh v. The United States, Number 2861; and in that respect it is illegal.

Because there was no evidence introduced on which to base an order of deportation we respectfully request that the order of the District Court denying the issuance of a writ of habeas corpus be reversed and the aliens be discharged.

Dated, San Francisco,
April 9, 1917.

JOSEPH P. FALLON,
*Attorney for Appellants.*